

Remarks

This is in response to the Office Action mailed on September 22, 2003. Claims 1-27 remain pending in the application, with claims 1, 12, 15, 19, 21, 23, 24, and 27 being independent. Reconsideration and allowance are respectfully requested in view of the following remarks.

II. Claims 1-3, 7, 8, 12, 15, 17-24, 26, and 27

In section 3 of the Office Action, claims 1-3, 7, 8, 12, 15, 17-24, 26, and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,965,707 to *Butterfield* in view of U.S. Patent No. 6,053,165 to *Butler et al.* and the "Glass" article from Microsoft® Encarta® Online Encyclopedia 2003. This rejection is respectfully traversed.

Independent claims 1, 12, 15, 19, 21, 23, 24, and 27 all recite translucent artificial embers including fused silica particles. Translucent artificial embers including fused silica particles are advantageous because, unlike glass, the semi-transparent nature of the fused silica provides an aesthetically pleasing glow when illuminated because the fused silica diffuses light in a more natural way than other materials. Application, page 9, lines 23-25.

It is apparently conceded in the rejection that neither *Butterfield*, *Butler*, nor the *Glass* article discloses or suggests use of translucent artificial embers including fused silica particles, as recited by claims 1, 12, 15, 19, 21, 23, 24, and 27. However, the rejection states that the use of glass material for the artificial embers is equivalent to use of the recited fused silica material. Office Action, page 3, lines 3-8. This assertion is respectfully traversed.

The rejection cites the present specification at page 9, lines 26 and 27, which states that other translucent, high temperature material could be used to make the translucent artificial embers, for support of the assertion that glass is an equivalent material to fused silica. However, this section of the application does not state that glass is an equivalent to fused silica particles, or even suggest that glass could be used as a comparable substitute to the silica. Instead, this section of the application simply recognizes that other high temperature materials can also be used in place of the disclosed materials.

Other references illustrate that use of glass is not equivalent to fused silica particles. For example, U.S. Patent No. 6,053,165 to *Butler et al.* (cited in the Information Disclosure Statement filed on August 14, 2001) discloses a glowing ember bed including glass. As

described in Butler, in order to accomplish the desired translucent glow effect using glass, it is necessary to process the glass and/or add materials to the glass. See Butler, column 2, line 60 - column 3, line 7 (describing, for example, molding and bonding glass frit or powder to the glass to accomplish the desired translucent glowing effect). In contrast, the fused silica particles, as disclosed and claimed herein, inherently exhibit the desired translucent glow effect when exposed to light without requiring additional materials and/or processing.

For at least the above reasons, reconsideration and allowance of claims 1, 12, 15, 19, 21, 23, 24, and 27, as well as claims 2, 3, 7, 8, 17, 18, 20, 22, and 26 that depend therefrom, are respectfully requested.

II. Claims 4-6, 9-11, 13, 14, 16, and 25

In sections 4-9 of the Office Action, claims 4-6, 9-11, 13, 14, 16, and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Butterfield* in view of *Butler* and in further view of various references, including: *Auer*, U.S. Patent No. 1,692,021; *White*, GB 249,321; *Busby et al.*, GB 2 072 832; *Whittaker et al.*, U.S. Patent No. 4,726,351; *Hess et al.*, U.S. Patent No. 5,642,580; and *Rehberg*, U.S. Patent No. 5,195,820. These rejections are respectfully traversed, and the correctness of the rejections is not conceded.

The additional references cited in these rejections do not remedy the noted shortcomings in *Butterfield*, *Butler*, and the *Glass* article discussed above.

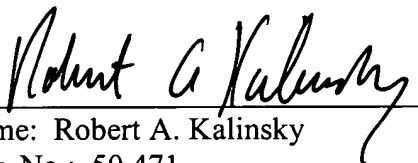
Therefore, claims 4-6, 9-11, 13, 14, 16 and 25, which all depend from claims 1, 12, 15, and 24, are allowable for at least the same reasons as those provided above with respect to claims 1, 12, 15, and 24. Reconsideration and allowance are respectfully requested.

III. Conclusion

In view of the above amendments and remarks, claims 1-27 are in condition for allowance. Reconsideration and allowance are respectfully requested. The Examiner is encouraged to contact the undersigned attorney with any questions regarding this application.

Respectfully submitted,
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: January 20, 2004


Name: Robert A. Kalinsky
Reg. No.: 50,471
RAK:pll